

## Message Text

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ORIGIN L-03

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-08  
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ICA-11 OPIC-03 SP-02 TRSE-00 LAB-04 SIL-01  
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DRAFTED BY L/EB:SMKLING:ER  
APPROVED BY D;CHRISTOPHER  
L:LMARKS  
EB/IFD:JAWINDER  
EUR:RDVINE  
D:JWSPIEGEL  
L/EB:FKWILLIS  
S/S:DANDERSON

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P 190226Z MAY 78  
FM SECSTATE WASHDC  
TO ALL OECD CAPITALS PRIORITY

C O N F I D E N T I A L STATE 127544

FOR AMBASSADOR FROM DEPUTY SECRETARY, USOECD

E.O. 11652:GDS

TAGS: EGEN, EIVN, ECOSOC, UN

SUBJECT: OECD SUPPORT FOR ILLICIT PAYMENTS AGREEMENT

REF: STATE 121385; USUN 2894; PARIS 7075; PARIS 832

1. FOLLOWING IS THE TEXT OF FOUR LETTERS (LONDON, PARIS  
AND BONN EACH RECEIVE DIFFERENT VERSIONS OF THE LETTER  
PREPARED FOR ALL OTHER OECD CAPITALS) FROM THE SECRETARY TO  
OECD FOREIGN MINISTERS URGING THEIR SUPPORT FOR AN OECD  
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CONSENSUS AT THE OECD MINISTERIAL ON AN ILLICIT PAYMENTS  
AGREEMENT CURRENTLY BEING NEGOTIATED IN THE ECOSOC WORKING  
GROUP ON CORRUPT PRACTICES. SUCH SUPPORT IS CRUCIAL FOR  
EFFORTS TO CONVENE A DIPLOMATIC CONFERENCE IN 1979 TO  
FINALIZE THIS TREATY. WE BELIEVE THAT A MEANINGFUL AGREE-  
MENT, BASED ON FRENCH AND U.S. PROPOSALS, MAY NOW BE WITHIN  
REACH. ONCE OECD POSITIONS ARE HARMONIZED, IT WILL BE  
EASIER TO DEAL WITH G-77 CONCERNS REGARDING SOUTHERN AFRICA  
AND LINKAGE BETWEEN AN ILLICIT PAYMENTS AGREEMENT AND A  
POSSIBLE CODE OF CONDUCT RELATING TO TNCs.

2. ACTION REQUESTED. SEPARATE TALKING POINTS AND LETTERS FOR USE IN BONN, PARIS, AND LONDON FOLLOW BELOW. TOKYO WILL RECEIVE SAME LETTE, AS ALL OTHER OECD CAPITALS, BUT TALKING POINTS FOR BONN, AND LONDON ARE ALSO APPLICABLE TO

TOKYO. WHEN PRESENTING LETTER TO HOST GOVERNMENTS OTHER ADDRESSEES SHOULD UND RL NE THE CONTINUED IMPORTANCE PRESIDENT CARTER ATTACHES TO AN EARLY INTERNATIONAL AGREEMENT ON THIS SUBJECT; AND THE NEED FOR A DEVELOPED COUNTRY CONSENSUS FOR THE ECOSOC NEGOTIATIONS; THE U.S. GOAL OF CONVENING A DIPLOMATIC CONFERENCE IN 1979 TO REACH FINAL AGREEMENT.

3. LETTER TO OECD MINISTERS

DEAR

-- OUR OECD MINISTERIAL MEETING LAST YEAR ENDORSED THE EFFORTS IN THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS TO NEGOTIATE AN AGREEMENT COMBATTING ILLICIT PAYMENTS IN INTERNATIONAL COMMERCIAL TRANSACTIONS. I WOULD HOPE THAT, AT OUR OECD MINISTERIAL MEETING NEXT MONTH, WE CONFIDENTIAL

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CAN ANNOUNCE OUR ACCORD ON THE OUTLINE OF SUCH AN AGREEMENT.

-- ALL OF US HAVE RECOGNIZED THE IMPORTANCE OF PREVENTING THESE ILLICIT PAYMENTS, WHICH DISTORT INTERNATIONAL TRADE AND INVESTMENT AND UNDERMINE PUBLIC CONFIDENCE IN OUR ESTABLISHED POLITICAL AND ECONOMIC INSTITUTIONS. NEW PROPOSALS HAVE NOW BEEN PUT FORWARD IN THE ECONOMIC AND SOCIAL COUNCIL, AND PROGRESS HAS BEEN MADE. I HOPE WE CAN GIVE FURTHER IMPETUS TO THESE EFFORTS WHEN WE MEET IN PARIS, AND THAT, IN PREPARATION FOR OUR MEETING, OUR STAFFS CAN WORK TOGETHER TO REDUCE, IF NOT ELIMINATE, POINTS OF DISAGREEMENT AMONG OECD MEMBER GOVERNMENTS.

-- AN OECD CONSENSUS WOULD ENABLE US TO PRESS EFFECTIVELY IN THE ECONOMIC AND SOCIAL COUNCIL FOR THL SCHEDULING OF A DIPLOMATIC CONFERENCE TO CONCLUDE AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS AT THE EARLIEST POSSIBLE DATE.

SINCERELY,

CYRUS R. VANCE

4. (LETTERS TO LONDON, BONN AND PARIS) LETTER TO:

LOUIS DE GUIRINGAUD, MINISTER OF FOREIGN AFFAIRS

DEAR LOUIS:

-- WE HAVE BEEN MUCH ENCOURAGED BY THE POSITIVE FRENCH EFFORTS IN THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS TO OBTAIN AN AGREEMENT COMBATTING ILLICIT PAYMENTS IN INTERNATIONAL TRANSACTIONS. THE FRENCH DRAFT AGREEMENT

IS A MAJOR STEP TOWARD AN OECD CONSENSUS.

-- WE HAVE SOME REMAINING PROBLEMS WITH THE FRENCH PROPOSALS BUT I BELIEVE THAT WITH FLEXIBILITY ON BOTH SIDES WE CAN MAKE THEM THE VEHICLE FOR GENERAL AGREEMENT AMONG CONFIDENTIAL

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THE OECD MEMBERS.

-- I PROPOSE THAT OUR STAFFS MEET PRIOR TO THE OECD CONSULTATIONS SCHEDULED FOR MAY 31 TO DISCUSS THE FRENCH DRAFT AND REACH GENERAL AGREEMENT ON A TEXT TO WHICH THE OTHER OECD MEMBERS COULD SUBSCRIBE. IT MIGHT THEN BE POSSIBLE FOR THE OECD MINISTERS, WHEN WE MEET IN PARIS NEXT MONTH, TO ANNOUNCE AGREEMENT IN PRINCIPLE.

SINCERELY,

CYRUS R. VANCE

LETTER TO:

DAVID A.L. OWEN  
SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

DEAR DAVID:

-- AT BOTH THE LONDON SUMMIT AND THE OECD MINISTERIAL LAST YEAR, WE ENDORSED EFFORTS TO NEGOTIATE AN AGREEMENT COMBATTING ILLICIT PAYMENTS IN INTERNATIONAL COMMERCIAL TRANSACTIONS. PROGRESS IN THE ECONOMIC AND SOCIAL COUNCIL SINCE HAS BEEN SLOW, AND THE BRITISH POSITION THROUGHOUT HAS NOT BEEN VERY SUPPORTIVE.

-- THE FRENCH DRAFT AGREEMENT, HOWEVER, SHOWS SOME PROMISE. WE HAVE CERTAIN PROBLEMS WITH IT, WHICH BRITAIN, AS A COMMON LAW COUNTRY, MAY ALSO SHARE. WE ARE PREPARED TO BE FLEXIBLE, AND I HAVE WRITTEN LOUIS DE GUIRINGAUD TO EXPRESS MY HOPE THAT HE TOO WILL BE FLEXIBLE.

-- I WOULD VERY MUCH HOPE THAT THE OECD CONSULTATIONS, STARTING MAY 31 IN PARIS, WILL LEAD TO AN AGREEMENT IN PRINCIPLE. I KNOW TIME IS SHORT, BUT I WOULD HOPE THAT THE CONFIDENTIAL

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OECD MINISTERS COULD ANNOUNCE AN AGREEMENT IN PRINCIPLE AT OUR MEETING IN PARIS ON JUNE 14-15. IF THE OECD CONSULTATIONS STARTING MAY 31 DEMONSTRATE THE NECESSARY POLITICAL WILL, I THINK THIS IS POSSIBLE.

-- I HOPE I CAN COUNT ON YOUR SUPPORT.

SINCERELY,

CYRUS R. VANCE

LETTER TO:

HANS-DIETRICH GENSCHER  
MINISTER OF FOREIGN AFFAIRS

DEAR HANS:

-- AT BOTH THE LONDON SUMMIT AND THE OECD MINISTERIAL LAST YEAR, WE ENDORSED THE NEGOTIATION OF AN AGREEMENT TO COMBAT ILLICIT PAYMENTS IN INTERNATIONAL COMMERCIAL TRANSACTIONS.

-- WHILE SOME PROPOSALS HAVE BEEN PUT FORWARD IN THE ECONOMIC AND SOCIAL COUNCIL AND SOME PROGRESS HAS BEEN MADE, THERE STILL IS NO CONSENSUS EVEN AMONG OECD COUNTRIES. THE FRENCH DRAFT AGREEMENT OFFERS AN OPPORTUNITY TO TAKE AN IMPORTANT STEP FORWARD, HOWEVER, IF WE ALL SHOW THE NECESSARY FLEXIBILITY AND POLITICAL WILL.

-- I BELIEVE THAT WE MUST MAKE EVERY EFFORT AT THE OECD CONSULTATIONS ON THE ILLICIT PAYMENTS TREATY, NOW SCHEDULED FOR MAY 31 - JUNE 2 IN PARIS, TO ACHIEVE AN OECD CONSENSUS ON THE OUTLINES OF AN AGREEMENT WHICH WE WOULD THEN ENDORSE AT THE JUNE 14-15 OECD MINISTERIAL MEETING. I AM URGING THE US DELEGATION, AS I HOPE YOU WILL URGE YOURS, TO THE MAY 31 - JUNE 2 MEETING TO DO ALL IT CAN TO ACHIEVE A CONSENSUS. IF WE AS OECD MINISTERS CAN ENDORSE SUCH A CONSENSUS, WE WILL HAVE TAKEN AN IMPORTANT STEP  
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TOWARD THE GOAL WE SET FOR OURSELVES LAST YEAR.

SINCERELY,

CYRUS R. VANCE

5. FOR LONDON, TOKYO AND BONN: FROM THE OUTSET, FRG AND U.K. HAVE BEEN RELUCTANT TO SUPPORT CRIMINALIZATION OF THE BRIBERY OF FOREIGN OFFICIALS BY THEIR NATIONALS AND ENTERPRISES AND RECORD-KEEPING OF AGENTS' FEES. TOKYO, WHILE INITIALLY SUPPORTIVE, REPORTEDLY IS HAVING INTERNAL DEBATE BETWEEN THEIR JUSTICE AND TRADE DEPARTMENTS REGARDING RESPONSIBILITY FOR CRIMINALIZATION. (REF. USUN 1341)  
EACH DEPARTMENT CLAIMS IT FALLS WITHIN THE OTHER'S PROVINCE, ALTHOUGH TRADE HAS EXISTING REGULATIONS WHICH WOULD SIMPLIFY A MOVE TOWARD CRIMINALIZATION. THEREFORE, YOU SHOULD CALL ON HOST GOVERNMENT'S SUPPORT IF WE ARE TO OBTAIN A MEANINGFUL INTERNATIONAL AGREEMENT. FOR LONDON,

REQUEST THAT YOU TAKE UP THE MATTER DIRECTLY WITH OWEN, EMPHASIZING THE CONTINUED IMPORTANCE THE PRESIDENT AND THE SECRETARY HAVE PLACED ON THIS ISSUE AND KEY ROLE OF U.K. COOPERATION WHICH HAS NOT BEEN SIGNIFICANT TO DATE.

WE LEAVE TO YOUR DISCRETION WHETHER VISIT BE ACCOMPLISHED AFTER OR SIMULTANEOUSLY WITH DELIVERY OF LETTER. FOLLOWING ARE TALKING POINTS:

-- IT IS ESSENTIAL, FOR ANY EFFECTIVE INTERNATIONAL AGREEMENT, THAT STATES UNDERTAKE A MULTILATIRAL COMMITMENT TO CRIMINALIZE BRIBERY WHICH THEIR NATIONALS AND FIRMS COMMIT OVERSEAS.

-- IN THE ECOSOC WORKING GROUP THERE HAS BEEN SUPPORT FOR CONFIDENTIAL

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CRIMINALIZATION AND FOR RECORD-KEEPING OF AGENTS' FEES FOR USE ONLY IN CRIMINAL INVESTIGATIONS.

-- IN VIEW OF THE EMERGING OECD SUPPORT FOR RECORD-KEEPING OF AGENTS' FEES FOR USE IN CRIMINAL INVESTIGATIONS, WE HOPE YOUR GOVERNMENT WOULD BE WILLING TO ACCEPT SUCH A MEASURE WHICH WOULD SIGNIFICANTLY STRENGTHEN THE EFFECTIVENESS OF AN AGREEMENT.

-- THE U.S. HOPES YOUR GOVERNMENT WILL SUPPORT AN AGREEMENT INCLUDING THESE FEATURES IN THE UPCOMING OECD CONSULTATIONS, AND IN THE ECOSOC WORKING GROUP.

-- IN THIS CONNECTION, WE SEEK YOUR SUPPORT FOR CONVENING A PLENIPOTENTIARY CONFERENCE IN 1979.

6. FOR PARIS: (REF. A STATE105614(NOTAL); REF. B. PARIS 14369 (NOTAL): BASED ON THE INDICATIONS THAT THE FRENCH ARE TENTATIVELY AMENABLE TO COMPROMISES (REFTEL B), WE ARE INTERESTED IN BEING FLEXIBLE AND EXPLORING THE POSSIBILITY OF NARROWING OUR DIFFERENCES IN ADVANCE OF THE OECD CONSULTATIONS MAY 31-JUNE 2 BY SENDING A REPRESENTATIVE TO PARIS FOR THAT PURPOSE MAY 29-30. WE PREFER MAY 29-30 BUT WOULD BE ABLE TO MEET ON MAY 23 THOUGH DATE IS LESS DESIRABLE. YOU SHOULD CALL AT THE HIGHEST APPROPRIATE LEVEL TO MAKE THE FOLLOWING POINTS:

-- WE VIEW THE FRENCH PROPOSALS FOR A TREATY AS A POSITIVE STEP TOWARDS AN AGREEMENT. HOWEVER, SOME IMPORTANT COMPROMISES ARE NECESSARY TO ACHIEVE OECD CONSENSUS AND IMPROVE THE CHANCES FOR A SUCCESSFUL INTERNATIONAL CONFERENCE. IT WOULD BE ESPECIALLY USEFUL TO EXPLORE OUR MUTUAL DIFFERENCE AND AREAS OF POSSIBLE COMPROMISE. WE ARE PREPARED TO MEET IN PARIS BEFORE THE MAY 31-JUNE 2 OECD MEETING FOR THIS PURPOSE ON MAY 29-30.

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-- WE SUPPORT THE FRENCH PROPOSAL FOR HOME COUNTRY CRIMINALIZATION (SEE REFTELS), BUT BELIEVE THAT THE SCOPE OF THE OFFENSES IN THE FRENCH TREATY PROPOSAL IS SO BROAD THAT IT

IS UNREALISTIC.

-- AN AGREEMENT RESTRICTED TO PAYMENTS MADE FOR THE PURPOSE OF OBTAINING OR RETAINING BUSINESS WILL PROVE MORE EFFECTIVE OVER THE LONG RUN, WHILE ELIMINATING THE MAJOR PROBLEMS AND DISTORTIONS WHICH ILLICIT PAYMENTS CAUSE IN INTERNATIONAL TRADE AND INVESTMENT.

-- WE HOPE FOR FRENCH FLEXIBILITY ON THEIR PROPOSAL FOR JURISDICTION BASED ON NATIONALITY TO ACCOMMODATE THE NEEDS OF COUNTRIES WITH A COMMON LAW TRADITION (WHERE JURISDICTION BASED PURELY ON NATIONALITY IS DIFFICULT TO ACCEPT).

-- IN VIEW OF THE EMERGING OECD SUPPORT FOR RECORD-KEEPING OF AGENTS' FEES FOR USE IN CRIMINAL INVESTIGATIONS, WE HOPE THE GOF WOULD BE WILLING TO ACCEPT SUCH A MEASURE WHICH WOULD SIGNIFICANTLY STRENGTHEN THE EFFECTIVENESS OF AN AGREEMENT.

-- WE SEEK FRENCH SUPPORT FOR A DIPLOMATIC CONFERENCE IN 1979 TO FINALIZE SUCH A TREATY AGREEMENT. VANCE

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## Message Attributes

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